

OGC 79-02827

26 March 1979

OGC Has Reviewed

STATINTL MEMORANDUM FOR: [REDACTED] Office of Legislative Counsel

STATINTL FROM : [REDACTED] Office of General Counsel

SUBJECT : CIA, NSA, and the Senior Executive Service

1. The Senior Executive Service, which was created by the Civil Service Reform Act of 1978, was designed to provide increased compensation and benefits to senior managers of the federal government coupled with decreased rights of tenure. Further, the entire government-wide SES program was made subject to the strict oversight and control of the Office of Personnel Management. The inclusion of the CIA personnel system within the SES program was vigorously fought against by this Agency because it would have impaired the unique personnel authorities of the Director of Central Intelligence, it would have hampered the DCI's flexibility in staffing the Agency to meet the ever-shifting exigencies of foreign affairs, and it would have interfered with the DCI's statutory responsibility to protect intelligence sources and methods from unauthorized disclosure. Weaker variations of these arguments were made by NSA and the Foreign Service to support their exemption from SES as well.

2. Since the passage of the Civil Service Reform Act, NSA and the Foreign Service have both launched legislative initiatives designed to secure for their senior management increases in compensation and benefits which unabashedly parallel the compensation and benefits of SES personnel. The Foreign Service has wisely launched its initiative within the context of legislation restructuring the Foreign Service personnel system, while NSA has chosen to go forward with a proposal that would simply establish a carbon copy of the SES in NSA for its senior managerial personnel.

3. In my opinion, NSA's proposal to create a Senior Cryptologic Executive Service will surely be viewed as a straightforward, virtually undisguised raid upon the U.S. Treasury. As written, the proposal would allow the Director of NSA to roam the SES provisions of title 5 of the United States Code at will and to administratively adopt whatever compensation and benefits for senior NSA personnel as he sees fit. Though NSA argues that the adoption of the provisions governing SES would be a useful administrative

tool in the management of its senior positions, in fact, the adoption of such provisions would only marginally increase the management prerogatives of NSA, and it could decrease those prerogatives substantially depending upon which SES provisions were administratively adopted. Any increase in the broad personnel authorities of NSA would actually be miniscule, thus the only advantage in establishing the SCES would be to give senior NSA personnel compensation and benefits they would not otherwise have. Moreover, NSA seeks to administer its version of the SES without the oversight or control of OPM.

4. The opportunity for increased compensation, authorization of sabbaticals, the abolition of the leave accumulation limitation, and the provision for early retirement with a less than fully successful SES performance are all inducements calculated to convince senior managers of the federal government to elect to join the government-wide SES program and accept a lessening of their rights of tenure. However, these inducements are unjustifiable in the case of NSA because the NSA proposal does not give senior managers the option of electing not to join the SCES and it would no more than marginally increase the managerial control of NSA over its senior personnel. The NSA proposal for a SCES is, in short, all carrot and no stick.

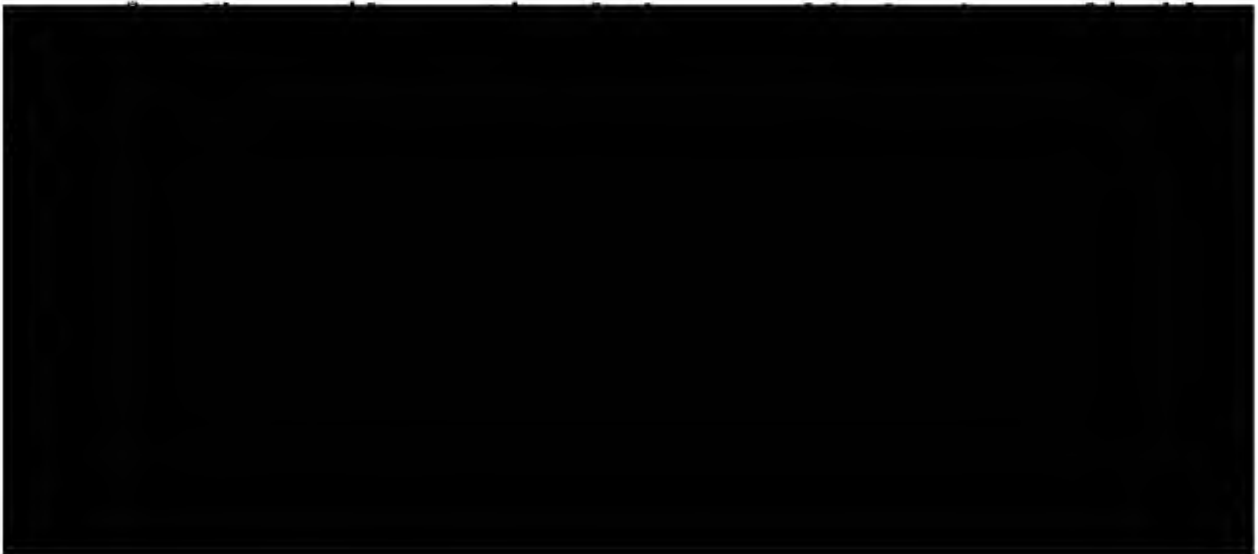
5. In addition to this grotesque attempt by NSA to superimpose an SES type program over the NSA personnel system, NSA is also proposing a merit pay system for middle-level managers that would mimic the merit pay system of the Civil Service Reform Act. To my mind, the merit pay system is one of the most ill-conceived aspects of that Act. As established, the merit pay system would strip a middle manager of his step increases and up to 50% of his comparability pay adjustments. Working under this system, it is likely that some managers will actually be making less than the employees they supervise. I believe that this system is harsh and inherently inequitable, and that it will ultimately lower the morale of middle management wherever it goes into effect.

6. While I agree with the unstated premise of NSA that intelligence agencies exempted from the provisions of the Civil Service Reform Act must be able to offer increased compensation and benefits to their senior personnel to remain competitive with the rest of the Government, the NSA legislative package is instructive, I think, on how not to go about achieving that objective. The NSA legislative package will probably look considerably different when, if ever, it is enacted into law. Before the package is introduced

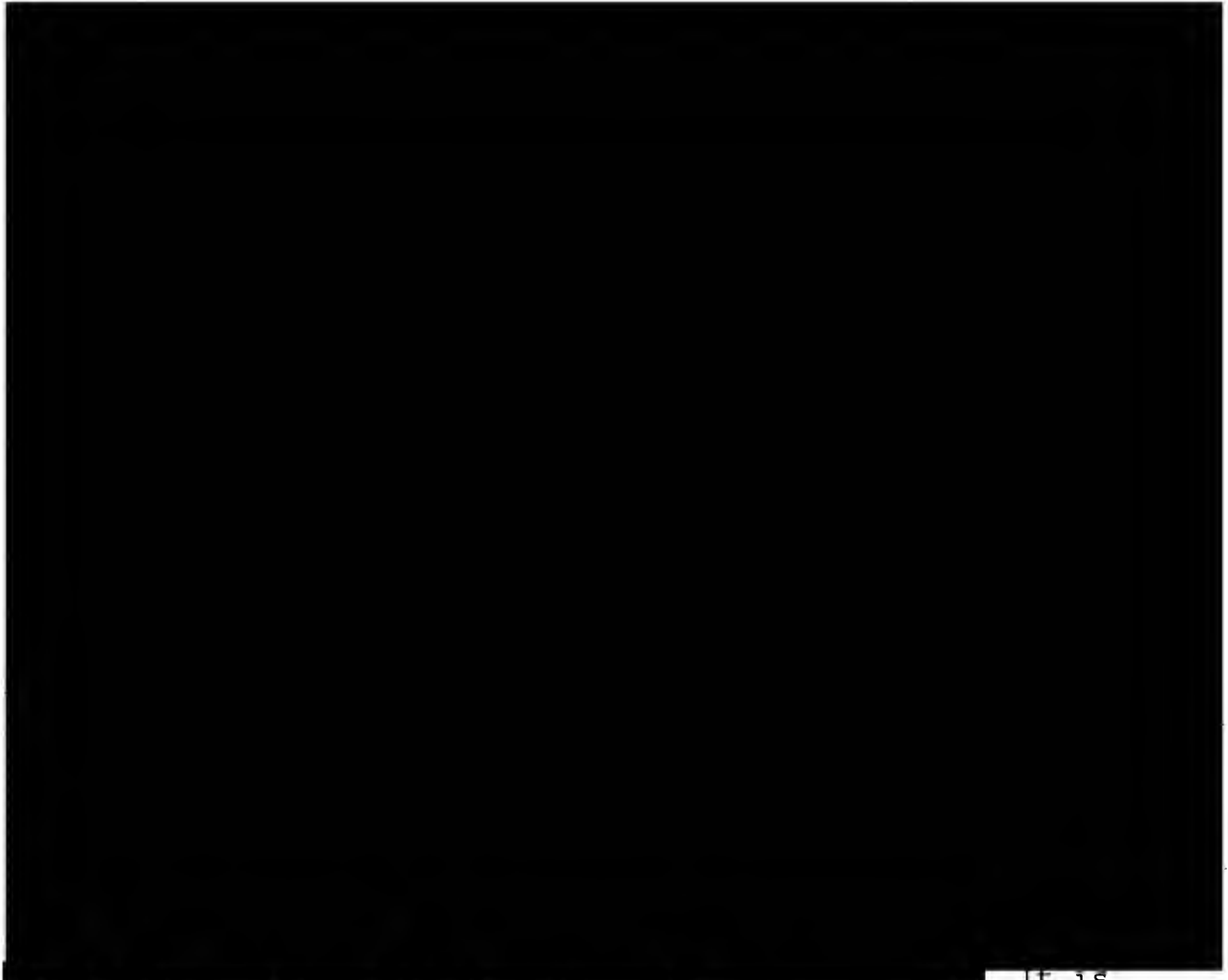
in Congress, OPM will surely get a crack at it. Then, after the package is introduced in Congress, it will almost certainly be reviewed by the Congressional committees with responsibility for civil service matters, in addition to the intelligence committees. The Office of General Counsel of NSA has indicated that it feels the referral of the NSA package to other than intelligence committees of Congress is unavoidable because the NSA package will probably be perceived as a part of civil service reform, and, in any case, NSA personnel statutes have been referred to such committees in the past. Apparently, since the compensation of NSA senior personnel is connected by statute to the supergrades of the General Schedule, it was felt by NSA that something had to be done immediately. I have been informed by the Office of General Counsel of NSA that a conscious decision was made to go forward with a proposal for the outright adoption of an SES type program, rather than trying to modify the entire NSA personnel system, because it was felt that a proposal for outright adoption would probably be enacted faster.

7. Nevertheless, I anticipate that NSA is in for a pounding by Congress, particularly the House Post Office and Civil Service Committee, because it will probably view the NSA proposal for an SCES as a sham solely designed to get increased compensation and benefits for senior NSA personnel. Moreover, it is conceivable that Congress may conclude that NSA presently has enough management tools with which to efficiently manage its senior positions. Finally, there is the clear danger that Congress may impose the oversight of a non-intelligence committee, like the House Post Office and Civil Service Committee, over the NSA personnel system as a price for passage of the proposed legislation.

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It is the further opinion of this Office that CIA can administratively create a personnel system which would establish a program of compensation and benefits for senior CIA personnel that would keep CIA competitive with the rest of the federal government in retaining and attracting such personnel; for this reason, a statutory link with the SES and merit pay provisions of the Civil Service Reform Act would not only be destructive of present DCI authorities, but unnecessary. It should also be noted that CIA should avoid even the appearance of attempting to directly mimic the SES and merit pay provisions because that could easily lead to a legislative attack upon our claims of uniqueness and our special personnel authorities, or to the establishment of legislative oversight over our personnel system by other than intelligence committees of Congress.

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

FROM:

Deputy Director of Personnel
for Plans and Control
1006 AMES

EXTENSION

NO.

DATE

22 May 1979

3383

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S
INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. DD/Pers
5E-58, Hqs. 22 MAY 1979

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5E-58, Hqs.

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Subsequent to NSA's submission of their draft legislation proposing to establish a Senior Executive Service for NSA, members of the staff of the House Intelligence Committee suggested that the Agency be included in the NSA package. This prompted a vigorous response from OGC (See attached). OP agreed with the general theme of the OGC memo. Since this question is apparently being brought up again via OMB, you may wish to review OGC's views on this, particularly paras. 8, 9, and 10.

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